IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3503 OF 2006

1. Ashok Sudam Botre
Age : 27 years, Occu : Agriculturist

2. Jalindar Yashwant Botre
Age : 49 years, Occu : Agriculturist

3. Chetan Popat Botre
Age : 36 years, Occu : Agriculturist

4. Santosh Rajaram Botre
Age : 29 years, Occu : Agriculturist

All R/o.Yelwadi, Tal.Khed,
District Pune ..Applicants

V/s.

1. The State of Maharashtra
(At the instance of Chakan
Police Station, Taluka Khed,
District Pune)

2. Smt.Ratan Kashinath Zombade
Age : Adult, R/o. At Post
Yelwadi, Taluka Khed,
District Pune
..Respondents

Sanjeev P. Kadam for the applicants
S.R.Shinde for the respondents

Coram : A.S.OKA, J.
Date on which judgment is reserved :21st December,2006
Date on which judgment is pronounced :10th January,2007

ORAL JUDGMENT

1. By an order dated 13th October, 2006 a notice was issued to the second respondent for a final disposal of the application at admission stage. The office note shows that the notice has been duly served to the second respondent in terms of the said order. Service report dated 23rd November, 2006 submitted by the Assistant Inspector of police, Chakan Police Station, District Pune has been filed on record along with an acknowledgment signed by the second respondent. None appears for the second respondent.

2. A F.I.R. was lodged at the instance of the second respondent vide C.R.No.210/2006 against the applicants and 100 other persons with Chakan Police Station, District Pune. The F.I.R. was lodged by the second respondent alleging commission of offences under Sections 143, 147, 148, 149, 452, 427, 323, 504, 506 of the Indian Penal Code and under Section 3(1), 3(1)(X), 3(1)(XV) of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989. The alleged offence was committed on 9th September, 2006 and wide publicity

was given in the news papers to the commission of alleged offence. According to the first informant, the first applicant viz. Ashok Botre, the Sarpanch Yelwadi village and others visited the residential locality where the first informant was residing and assaulted the first informant. An allegation in the F.I.R. is that the applicants and other accused persons abused the first informant and others who belong to Scheduled Caste. This application has filed for invoking the power of this Court under Section 482 of the Code of Criminal Procedure, 1973 for quashing the F.I.R.

3. According to the applicants, during the last few years there were a large number of encroachments on a Government land. According to them, the encroachers were involved in illegal activities of manufacture of illicit liquor, theft and robberies etc. On 8th September, 2006, when the applicants and other villagers were on night patrolling, one Tulshiram was found in the village at about 1.00 A.M. in suspicious circumstances. He was handed over to the police. On 10th September,

2006, a special meeting of the village panchayat was held in which it was decided to take appropriate action for removal of illegal and unauthorized encroachments on the Government land. Accordingly, complaints were forwarded to the various authorities. On 13th September, 2006, the Block Development Officer had replied to the grievances and directed applicant No.1 to take appropriate steps for removal of encroachments. According to the applicants, number of encroachers started shifting their sheds from the land belonging to the Government. However, Media Reports were published in local News Papers alleging that the applicants and other accused persons had used force for shifting the encroachers. It is alleged that one Bhagwanrao Vairat threatened that if the offence was not registered against the applicants and others, he will commit self immolation in the office of the Superintendent of Police, Pune (Rural). According to the applicants, because of such threats and publicity in Media, the offence was registered by the police. It is submitted by the applicants that

the F.I.R. was lodged at the instance of the encroachers just to ensure that no action is taken against them.

4. Shri.Madhukar Mote, the Deputy Superintendent of Police, attached to Khed Division, Pune has filed an affidavit. He has stated that after registration of the F.I.R. investigation was transferred to him. In paragraphs 4 to 6 of the affidavit, he has stated thus :-

> "4. I say that after registering the offence against the petitioner, the investigation was transferred to me and I recorded the statement of 59 villagers and residents of Gairan. I say that the present petitioners filed the present petition for quashing the above said F.I.R. under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act as well as under the provisions of Indian Penal Code.
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> 5. I say that the present petitioners, after approaching this Hon'ble Court for quashing the F.I.R., this Hon'ble Court granted Ad-Interim order as i.e.not to take further steps in the matter and not to arrest the petitioner herein. The said order has been passed by this Hon'ble Court on 21.09.2006.
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> 6. I say that after granting the Ad-interim order in favour of the petitioners, the complainant filed the affidavit dated 22.09.2006contending that the said complaint is filed on account of false interpretation

and misunderstandingly,involved the present petitioners for the alleged offences hereinabove. Thereafter, I recorded the supplementary statement relying upon the affidavit which is tendered to me as it shows that non-involvement of present petitioner in the above said C.R.

5. The learned A.P.P. has placed on record a true xerox copy of the affidavit dated 22nd September, 2006 affirmed by the second respondent before the Executive Magistrate, Rajgurunagar. The said copy is taken on record and marked as 'X' for identification. In the said affidavit, the second respondent has stated that the applicants and other accused are not really concerned with C.R.No.210 of 2006 and due to misunderstanding she lodged a complaint with the police station. The learned A.P.P stated that the second respondent is no longer interested in prosecuting her complaint.

6. I have considered the submissions. The applicants have annexed to this application a certified true copy of resolution passed by the special general meeting of the village panchayat held on 10th September, 2006. The said resolution

shows that it was resolved to take action against the encroachers on a Government land. It was also resolved to stop activity of manufacture of illicit liquor.

7. In paragraph No.3 of the affidavit of Shri Madhukar Mote, he has stated that on 14th September, 2006 some political leaders of the community to which the second respondent belongs, villagers and reporters of the Press visited Chakan police station. He stated that he tried his level best to resolve the dispute of the Gairan Government land and the persons who attended the meeting agreed for the same and left the police station. However, on 16th September, 2006, the political leaders of the community met the villagers and declared that if action was not taken by the police machinery, they will commit mass suicide. He has stated that under the circumstances, F.I.R. at the instance of the second respondent was recorded.

8. The second respondent has not appeared before this Court though notice is duly served. A

copy of the affidavit of the second respondent dated 22nd September, 2006 placed on record by the learned A.P.P. shows that the second respondent lodged F.I.R. due to misunderstanding and she is not interested in prosecuting the same. The affidavit of Deputy Superintendent of police clearly shows that F.I.R. was registered only because there was a pressure exerted by the political leaders of a particular community. Now the first informant herself is not interested in prosecuting the applicants and others. Considering what is set out in the affidavit by the Deputy Superintendent of Police and considering the fact that the second respondent has not appeared before this Court, it is obvious that continuation of Criminal proceedings against the applicants and others will cause sheer harassment to the applicants as well as the second respondent. No fruitful purpose will be served by continuing a stale prosecution. In my view this is a fit case for exercising power under Section 482 of the said Code for quashing the F.I.R. and further proceedings on the basis of the F.I.R.

9. Hence, I pass the following order.

O R D E R

A. Rule is made absolute in terms of prayer clause (c) which reads thus :-

“That the F.I.R. registered vide C.R.No.210 of 2006 with Chakan Police Station against the applicants and 100 others may kindly be quashed.”

(A.S.OKA, J.)